

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 99-259

December 3, 1999

NORTHERN UTILITIES, INC.,
Investigation of Decision to Terminate
Agreement With Affiliate, Granite State
Gas Transmission Company for LNG
Services

ORDER

Welch, Chairman; Nugent and Diamond, Commissioners

I. SUMMARY

We decide to join in the proposed comprehensive settlement of this matter before the Federal Energy Regulatory Commission (FERC) and close our investigation.

II. PROCEDURAL HISTORY

On April 30, 1999, we issued a Notice of Investigation initiating this investigation into Northern Utilities, Inc.'s (Northern) decision to terminate an approved Precedent Agreement with its affiliate, Granite State Gas Transmission Company (Granite), for liquefied natural gas (LNG) storage and vaporization services from a proposed facility in Wells, Maine. This matter was assigned Docket No. 99-259.

Similar proceedings were opened before the New Hampshire Public Utilities Commission (*Northern Utilities, Inc., Wells, Maine LNG Facility*, Docket No. DG 99-050) and FERC (*Granite State Gas Transmission Company*, Docket No. CP99-238-000) because this matter involved issues impacting both state and federal jurisdiction. Our investigation was initially established as a summary investigation pursuant to 35-A M.R.S.A. § 1303(1) to allow us to conduct discovery and participate in the related state and federal proceedings.

Throughout the next four months, our Staff issued discovery requests to Northern and participated in settlement discussions among the parties in all jurisdictions.

On September 2, 1999, Northern filed with the Commission a proposed Joint Stipulation and Agreement that was developed in settlement discussions and was executed by Northern, Granite, The Office of the Public Advocate (OPA), No Tanks and the New Hampshire PUC staff and Office of Consumer Advocate. On September 2, 1999, we issued a Notice of Intention to Hold Formal Public Hearing pursuant to 35-A M.R.S.A. §1302(2) on the proposed settlement, noting that the proposed settlement would resolve all issues raised in the Maine investigation. In particular, the proposed settlement: 1) requires Maine ratepayers to pay \$4.5 million of cancelled Wells project

costs plus carrying costs over seven years; 2) finds Northern's decision to terminate its contractual commitments to the LNG facility reasonable; and 3) limits further inquiry by the Commission into issues regarding the Wells LNG facility. On September 9, 1999, the Commission notified interested persons in Docket Nos. 95-480 and 99-259 by Procedural Order of the intervention deadline and the date and time of the hearing.¹

Maritimes & Northeast Pipeline, L.L.C. and OPA filed petitions to intervene. The Hearing Examiner granted both interventions.

The Commission held a hearing on the proposed settlement on September 23, 1999. Northern witnesses Francisco DaFonte, Director of Gas Control for Northern and Bay State Gas Company, James Simpson, President of Northern, Dwight Curley, retired President of Granite State, Richard Cencini, Vice President of Regulatory Affairs, and Joseph Ferro, Director of Revenue Development, presented the proposed settlement and responded to questions. Representatives of OPA and No Tanks spoke in support of the proposed settlement.

At a deliberative session held immediately following the hearing, we decided to accept the settlement in resolution of all outstanding issues regarding the Wells LNG facility matter and to join the settlement agreement for presentation to FERC.

Subsequently, at Northern's request, we published newspaper notice of our proposed decision to join the settlement and allowed any interested person or ratepayers to present views on the proposed settlement by October 21, 1999, prior to issuance of the Commission's final order. See Notice of Proposed Settlement published October 10-12, 1999. The Commission received no further comment on its proposed decision to accept the settlement.

III. BACKGROUND

On August 9, 1996, we approved a Precedent Agreement executed by Northern and its affiliate, Granite, in which Northern agreed to purchase two billion cubic feet (Bcf) of LNG storage and vaporization services from Granite for a term of 20 years. *Northern Utilities Inc., Proposed Precedent Agreement with Granite State Gas Transmission, Inc. for LNG Storage Service*, Docket No. 95-480 (Aug. 9, 1996). In doing so, we found that the agreement was a prudent, economic resource option both for short-term base load and long-term peaking supply given Northern's expectation that it could sell excess capacity at advantageous rates, and that the facility could be built at an estimated cost of \$50.4 million.

Nearly two years later, after an intensive and protracted review fueled by the opposition of No Tanks and the Maine Office of the Public Advocate, FERC awarded a certificate of public convenience and necessity to Granite for construction and operation

¹ We originally approved Northern's decision to enter the Precedent Agreement with Granite for LNG services in Docket No. 95-480.

of the project. See *Granite State Gas Transmission, Inc.*, Docket No. CP96-610-000, Order Issuing Certificate (FERC May 27, 1998). FERC based its finding of market need on Northern's agreement to contract for the full amount of the facility for a 20-year term, approved by two state commissions. FERC conditioned its certificate on the execution of a firm contract by Northern and Granite. This Storage Contract was never executed.

In November 1998, we indicated that all decisions regarding Northern's commitment to the Wells LNG project since our initial approval in August 1996 would be scrutinized, and only prudently incurred, fully mitigated costs would be allowed in rates. *Richard Clark et al v. Northern Utilities, Inc.*, Docket No. 98-029 (Nov. 19, 1998).

On March 5, 1999, Granite filed a request with FERC for a declaratory order confirming that Granite could collect, pursuant to FERC tariff, a contractual exit fee from Northern for all project development costs through May 31, 1999. See *Granite State Gas Transmission Company*, Docket No. CP99-238-000 (FERC Notice of Proceeding dated March 5, 1999). Granite sought recovery of \$11.6 million plus carrying costs from Northern's Maine and New Hampshire customers. In exchange, Granite would surrender its certificate for the facility.

The filing with FERC indicated that, by letter dated February 16, 1999, Northern had agreed to pay its affiliate the full amount described in its filing. The filing also indicated that Northern has contracted for alternative pipeline and LNG services that are more economical than the service Granite would have provided from its proposed Wells LNG facility.

The Maine PUC, the Maine OPA, the New Hampshire Consumer Advocate, No Tanks, and the New Hampshire PUC all intervened in the FERC proceeding. All intervenors except No Tanks which had committed in a settlement agreement with Granite in its First Circuit appeal to support Granite's filing before FERC, filed protests. Noting that the filing raised several controversial issues involving state jurisdiction, the state commissions urged FERC to allow the states to conduct their own investigations of this matter before acting on Granite's petition.

IV. LEGAL STANDARDS

Under Maine law, we must review and approve contracts and arrangements between affiliates to determine that the arrangement is "not adverse to the public interest." 35-A M.R.S.A. § 707(3). Northern's agreement to pay Granite \$11.6 million in cancelled project development costs, plus carrying costs over the amortization period, constitutes an arrangement subject to approval pursuant to § 707. Such agreements between affiliates have no legal effect until we provide our written approval.

We also review settlements proposed to resolve our proceedings to determine that the overall result is in the public interest and that it is supported by a broad spectrum of interests. *Re Central Maine Power Company, Proposed Increase in Rates*, Docket No. 92-345 (II), Detailed Opinion and Subsidiary Findings at 2 (Me. P.U.C. Jan.

10, 1995). Finally, we review settlements to consider whether they are contrary to any public policy or precedent we have adopted.

In this case, we are considering not only the proposed settlement in the context of resolution of our proceeding, but also what position the Commission will take on the proposed settlement in its role as a party to the FERC proceeding. In particular, we must decide whether this Commission will support and execute the settlement for submission to FERC. As required by law, we notified all other parties from Maine who are participating in the (FERC) federal proceeding before deliberating whether to take a position as a party in that federal proceeding. 35-A M.R.S.A. § 108-A (Supp. 1999).

V. DESCRIPTION OF SETTLEMENT

The proposed settlement provides that Granite will surrender its FERC certificate of public convenience and necessity (CPN) for the Wells LNG facility and agrees, along with its affiliates, not to build an LNG facility on the existing Wells site. Granite will recover from Northern's ratepayers approximately \$8.3 million (including carrying costs) over a 7-year period of which \$4.5 million will be collected from Northern's Maine ratepayers. This amounts approximately to a 1.5% increase for residential heating customers. These revenues will be recovered through Northern's Maine Division cost of gas adjustment (CGA).²

The settlement would also resolve all issues raised in state and federal proceedings regarding the Wells project as well as all issues related to No Tanks' appeal of the FERC order granting a CPN to construct and operate the facility. *No Tanks, Inc. v. FERC*, Case No. 98-1463 (D.C. Cir. filed Oct. 2, 1998).

VI. ANALYSIS AND DECISION

We conclude that there is a substantial risk to ratepayers if we reject this settlement and pursue the matters at issue through litigation, because the outcome of the pending litigation could result in Maine ratepayers' bearing a higher amount of cancelled project costs. Moreover a litigated result might not be as equitable a resolution of the existing controversies as the one presented in this settlement.

In essence, Granite and Northern propose to cancel the storage facility after having spent approximately \$11.6 million, principally in design, licensing, and allowance for funds used during construction (AFUDC). Our established regulatory policy is to allow full recovery of prudent investment in cancelled plants, including normal rate base treatment where, as here, the recovery is spread over a period of years. See *Investigation of Seabrook Involvements by Maine Utilities*, Docket No. 84-113, Order (Apr. 17, 1985). In this case, the \$4.5 million which will be recovered from Maine

² It is anticipated that Granite will charge the Wells project surcharge to Northern pursuant to a FERC tariff.

ratepayers is equivalent to a finding that \$6.6 million (or 56.9%) of the \$11.6 million that Granite actually spent was prudent and recoverable from ratepayers.

Given the history of this matter, along with the controversies and questions that it has engendered, we find this cost sharing between ratepayers and shareholders to be appropriate and equitable. Moreover, the amount allocated to Maine's ratepayers under the proposed settlement appears to be a fair approximation of what a prudent manager would have spent to develop the project to meet Northern's needs.

In addition, the recovery schedule proposed for Northern's Maine Division is reasonable; the 7-year amortization will mitigate the impact on ratepayers.

Finally we note that because all parties in interest support this settlement, it represents a complete and comprehensive resolution of the matters at issue. The controversy surrounding this project has been extensive and long-lived. This settlement successfully ends that controversy and appears to do so in a manner that evidences genuine compromise and serves the public interest with respect to public utility and ratepayer matters.

We are satisfied that the ratepayers' interests have been aggressively pursued through the participation of the public advocates of both Maine and New Hampshire in this settlement as well as that of our own staff. We recognize that, in a matter such as this, Northern cannot independently assert its own interests, particularly if opposed to the interests of an affiliate or shareholders, because of the conflict it presents to the corporate entity.

For reasons stated above, we find the proposed settlement to be a reasonable and comprehensive resolution of the issues surrounding this matter, and, we will join the settlement for presentation to FERC. Since we find that the settlement resolves all matters at issue in our proceeding, we also close this docket. We will separately investigate in another docket Northern's proposal that this surcharge be collected from certain transportation customers, rather than only from sales customers, as would currently be the case.

Accordingly, we

ORDER

1. That the Joint Stipulation and Agreement filed September 2, 1999 is approved to resolve all matters at issue in this proceeding and this docket is hereby closed;
2. That *Northern Utilities, Inc., Proposed Tariff Revision to Recover Wells Project Surcharge from Certain Transportation Customers*, Docket No. 99-873 is hereby opened for consideration of Northern's proposal to collect the Wells surcharge from transportation customers; and

3. That the Maine Public Utilities Commission will join in the Joint Settlement and Agreement as a party for presentation to FERC in Docket No. CP99-238-000 as comprehensive settlement thereof.

Dated at Augusta, Maine, this 3rd day of December, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.